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December 11, 1998

MARVIN ROSENBERG
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VIA HAND DELIVERY
Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Satellite Delivery of Network Signals
to Unserved Households for Purposes
of the Satellite Home Viewer Act
CS Docket No. 98-201
RM No. 9335
RM No. 9345

Dear Ms. Salas:

Transmitted herewith, on behalf of Hubbard Broadcasting, Inc., is an original and eight (8) copies of its Comments in the above-captioned proceeding.

An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

Should you have any questions, please contact the undersigned.

Very truly yours,

HOLLAND & KNIGHT LLP

Marvin Rosenberg

Marvin Rosenberg
Counsel for
Hubbard Broadcasting, Inc.

Enclosure
cc: Mr. Don Fowler, FCC (By Hand)

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Satellite Delivery of Network Signals	)	CS Docket No. 98-201
to Unserved Households for	)	RM No. 9335
Purposes of the Satellite Home	)	RM No. 9345
Viewer Act	)	
	)	
Part 73 Definition and Measurement	)	
of Signals of Grade B Intensity	)	

To: The Commission

COMMENTS OF HUBBARD BROADCASTING, INC.

Hubbard Broadcasting, Inc. ("HBI"), by its attorneys, hereby submits these comments in response to the *Notice of Proposed Rule Making* released by the Federal Communications Commission in the above-captioned proceeding. *Notice of Proposed Rule Making*, CS Docket No. 98-201, RM No. 9335, RM No. 9345 (rel. Nov. 17, 1998) (*"NPRM"*). The *NPRM* was released in response to petitions for rule making filed by the National Rural Telecommunications Cooperative and EchoStar Communications Corporation. The petitions seek to change the Grade B definition used to determine whether a household is "unserved" by a local network affiliated television broadcast station for purposes of the 1988 Satellite Home Viewer Act ("SHVA"). Thus, the *NPRM* seeks comment on, among other things, (1) changing the definition of Grade B intensity so that truly unserved households can be better identified and (2) a methodology for accurately predicting whether an individual household is able to receive a signal of Grade B intensity.

1. HBI is the licensee and/or parent corporation of 10 full service television stations. HBI believes that all consumers are entitled to television service and, consistent with the intent of the SHVA, truly unserved households should receive a broadcast network signal. However, a satellite company cannot choose to deliver network signals to a viewer simply because the viewer is subjectively unhappy with the quality of his or her television picture.

2. HBI has an interest in this proceeding because a weaker Grade B intensity standard that would materially reduce the network exclusivity area presently afforded to local television stations would have a detrimental effect on the viability of local stations.

3. In the SHVA, Congress granted a limited exception to the exclusive programming copyrights enjoyed by television networks and their affiliates because it recognized that some households are unable to receive network station signals over the air. The exception is a narrow compulsory copyright license that direct-to-home satellite video providers may use for retransmitting signals of a defined class of television stations "to persons who reside in unserved households." 17 U.S.C. § 119(a)(2)(B). The term "unserved household" is defined to include a household that "cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of Grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network." *Id.* § 119(d)(10).

4. The Grade B intensity standard is a Commission-defined measure of the strength of a television station's broadcast signal. 47 C.F.R. § 73.683. Grade B represents the field strength of a signal 30 feet above ground that is strong enough, in the absence of man-made noise or interference from other stations, to provide a television picture that the median observer would classify as "acceptable" using a rooftop antenna. The Grade B contour is defined as the set of

points along which the best 50% of the locations should get an acceptable picture at least 90% of the time.

5. In the *NPRM*, the Commission correctly notes that the SHVA compulsory copyright license is limited in scope because Congress recognized the importance that the network-affiliate relationship plays in delivering free, over-the-air broadcasts to American families and the value of localism in broadcasting. *NPRM* ¶ 3. The *NPRM* further notes that "Congress was concerned that without copyright protection the economic viability of local stations, specifically those affiliated with national broadcast networks, might be jeopardized, thus undermining one important source of local information." *Id.*

6. The Commission should retain the current definition of Grade B intensity. Any change in the standard of an acceptable signal that would shrink a station's local market and enlarge the number of households eligible to receive distant network signals would undermine Congress' and the Commission's goal of localism. A "weaker" Grade B intensity standard would erode a station's audience and its ability to reach its viewers with information of interest to the local community such as local news, information on local weather, and information on community events. Significantly, public service announcements on a local station would not reach households that would no longer watch the local station.

7. A weaker Grade B intensity standard would also have an adverse impact on the ability of local businesses to reach prospective customers with television advertising. The diversion of viewers to distant stations reduces the audience of the local stations. In order to reach the largest number of prospective customers in the local community, a local business may need to purchase time on distant stations as well as on the local stations. This would increase

the advertising costs of such businesses because they would have to pay for advertising coverage not only in the local market but also in the distant station's local market. It is likely that few businesses could afford this option given the costs. Thus, local businesses would lose the ability to reach potential customers.

8. The diversion of viewers to distant stations would also cause local stations to lose valuable advertising revenue, as advertising rates are based on viewership. This, in turn, could result in fewer locally produced programs which are often funded with local advertising revenue. In short, a weaker Grade B intensity standard would adversely affect local stations, local programming, local businesses, and the economy as a whole.

9. Further, such a change in the Grade B intensity standard would be detrimental to the network-affiliate relationship. By allowing satellite companies to deliver distant network signals to customers who already receive local station signals, local affiliates would no longer enjoy their exclusive rights to transmit network programming to their own markets.

10. HBI urges the Commission to use a predictive model in lieu of actual measurements for purposes of determining whether an individual household receives a Grade B intensity signal. HBI agrees with the Commission that predictive models can be effective proxies for individual household measurements. In addition, HBI agrees with the Commission that a predictive model is much more cost efficient than taking individual household measurements which require time, money and other resources.

11. HBI concurs with the Commission's tentative conclusion that the Commission's traditional predictive methodology for determining a Grade B contour, outlined in Section 73.684 of the Commission's Rules, is insufficient for predicting signal strength at individual households.

HBI supports the Commission's proposal to use the Longley-Rice propagation model for predicting Grade B intensity for the purpose of SHVA determinations. The Longley-Rice model provides an estimate of Grade B signal strength, similar to the traditional Grade B contour method, that more precisely describes actual areas of coverage because the model can adjust the predictions for changes in terrain along the entire path from the transmitter site to the specified receive site.

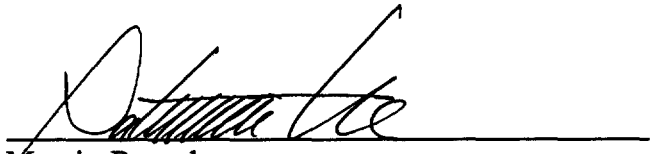
12. The Longley-Rice model is a well-tested predictive model which has been utilized by the satellite and broadcast industries as well as by the Commission. The satellite and broadcast industries currently use the Longley-Rice methodology for Grade B service prediction. Recently, the Commission adopted rules in the DTV proceeding for analyzing TV service using a point-to-point prediction method based on the Longley-Rice propagation model. The Longley-Rice propagation model is also the most widely-used private means of predicting a Grade B coverage area for SHVA purposes. In addition, the Longley-Rice model is the method used in the settlements between Primestar, Netlink and the National Association of Broadcasters (including some of its individual station members) to resolve disputes arising from SHVA requirements. Accordingly, HBI supports the Commission's proposed adoption of the Longley-Rice propagation model.

13. In conclusion, in order to preserve local television and the valuable network-affiliate relationship, the Commission should not change the definition of Grade B intensity. In addition, the Commission should adopt the Longley-Rice propagation model for predicting

whether an individual household receives a Grade B intensity signal for purposes of SHVA determinations.

Respectfully submitted,

HUBBARD BROADCASTING, INC.



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